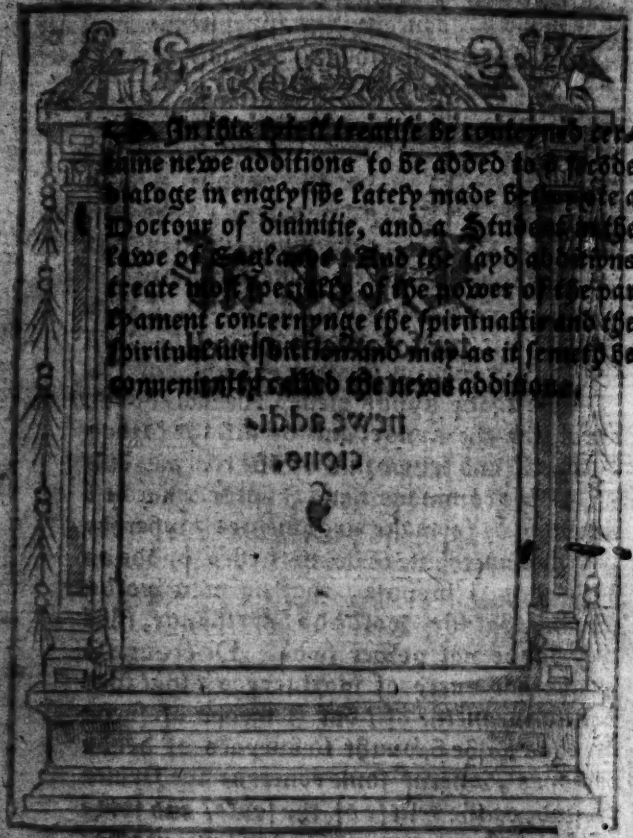
Here af-
ter foloweth a lytell
treatise called the
newe addi-
cions.



The first addition, what the parliament may do concernynge the spiritualtie and the spiritual iurisdiction, and what nat.

Doctour. I praye the let me knowe thy mynde in this question, whether kynges (as thou thynkest) haue power to make any lawes of mortuaries? Stud. There were diuerse made of mortuaries in the parlyament holden in the xxi. yere of our soueraygne lorde kynge Henry the viii. by the assente of the kynge, and of all the lordes spirituall and temporall of the realme, and of all the commons: and I holde it not hard to reason or to make argumentes, whether they had auctoritie to do that they dydde or nat. For I suppose, that no man wolde thynke, that they wolde do any thynge, that they hadde nat power to do. Doctour. I meane nat onely of mortuaryes, that that statute meanethe of, but I meane of suche thynges as be brought to buryalle of deade persones, whereof some concerne the seruice of god, or the reliefe of the soule, and some the worldly countynance, as in some places

the churche clayme to haue the taper / that standeth in the myddell of the herse ouer the herte of the corpse / and some clayme to haue all the tapers / some also clayme to haue one of the torches / that is aboute the herse / and some to haue all the torches. And if the body be brought in a charette / or with rote armour / or suche other / than they clayme all the horses and charet / and the apparell / or parte therof / and the coote armures or other lyke / as sequeles to the body. And these rights and duetes be called in some places mortuaryes / and of these I meane moste principally in this question. I pray the lette me knowe what thou thynkeste therein.

Student. I praye the lette me fyrste knowe, what is thyne opinion in this question. Doctour. I thynke that of suche of the lyde mortuaries / as the churche hath right in, in suche maner as is before rehersed, by prescription or other wyse, and of suche thinges as be ordeyned at suche buriall to the fruyte of god, or to the relefe of the soule / that the parlyament hath no power to prohibite them, as to prohibite, that the churche shulde haue no suche mortuaryes / or that there shulde nat be bydden to the buryall so many prestes, or that there shall nat be aboue

so

so many tapers or torches, or that there shal nat be gyuen aboue suche a certayne somme in almes / I suppose that the parliment hath no power to these thinges: for they be annexed to the ryghte spirituall, wherof the temporal iurisdiction hath no power. For the inferiour maye nat iudge vpon the superiour. But to make a lawe, that there shall nat be gyuen aboue so many blacke gownes, or that there shal nat be any herode of armes there, but he that is buryed were of suche a degree, or that no blacke clothes shall be hanged in the strietes fro the house, where he dyed, to the churche / as is vsed in many cyties and good townes, or to prohibite suche other thinges, as be but worldely pompes, and be rather consolations to the frendes that be aliue, than any relefe to the soule / that is departed / wher fore the churche fauoureth them nat. I thynke the parlyament hath good auctorite to make a lawe. I praye the let me knowe thy mynde, what thou thynkest in these diuersities. Student. Verily I thinke that in all cases before rehersed / the parlyament with a cause hath good auctorite to make lawes, as if they were ordeyned by the parlyment, that at suche buriels the churche shulde neyther haue torche nor taper / house

nor chaplete / ne none other thynge lyke; but that they shulde alway pertayne to the executours to the vse of the testatour: this were a good statute, and ought to be obserued / as well by spyrytuall men as by temporall: and this I take to be the reason why / for all goodes / though they be in the handes of spirituall men, be temporall, concernyng the body and nourysshynge the body as they do to temporall men. And Johñ Gerson holdeth the same opinion, as hit appereth in his treatise of the spirituall lyfe of the soule / the .iii. lesson, and the .iii. corollarie / where of mention is made more at large in the first dialogue in englysshe / the .iii. chaptre. And all temporall thynges the kyng and his executours / as in the ryght of the crowne / gyue in this realme alwaye ordered / and iudged by his lawes. And therfore I suppose, that the parlyament maye enacte / that there shall nat be layde vpon a deade persone but suche a clothe, or thre many tapers or candels set vp about hym. And here I wold saye farther in one thynge, and that is this / that no prescripcion had by auctorite of the spirituall lawe maye gyue no ryght within this realme to those mortuaryes / that we speake of nowe / ne to the sayde mortuaries,

that

that be put awaye by the sayde statute: ne yet to any pension or annuitie. But if any ryght shall be wonne therin by prescription, it must be by a prescription had after the course of the lawe of the realme, and the best prescription therof is this, that is to saye, that no manner mynde shall remeyne, the contrarye whereof, is hedd of the prescription is made. And if this be trewe, than have many moo sumaries ben clayned and taken in tymes paste without title, whereby the takers have ben bounden to restitution. And that hit is treve, that I have sayde of suche prescriptions of mortuaries and pensions, me thynketh this maye appere thus: If there were a lawe made by the churche, that at everye buryall the curate shulde have all the tapers and torches, that were about the corps, I suppose that hit is clere, that that lawe bounde nat in this realme, there as no prescription were therof before. And if a lawe made by the churche shuld nat in this case bynde, how shulde than a prescription, grounded onely vpon the lawes of the churche, bynde? I can nat se howe. But if it were in a countrey where the churche hathe some tythe in temporall thynges, it were the quentier dowte. And in this case many say, that a prohibition

dughte of ryghte to be graunted to prohibite
the spirituall iuges, that they shall not gyue
sentence agaynste the preseruption of the kyn-
ges lawe / whereby any temporall goodes
may be bounde / lyke as that they shall not
holde plee of that that belongeth to the kyn-
ges lawe, bute suche a prohibicion is not in
vse. But if it were enacted, that a prohi-
bition shulde hereafter lye in that case / it sup-
pose / that it were a ryghte good and reen-
sonable statute. And also whether the
preseruption after the laude of the churche /
ouer tythe for tythes / is after some men the
greatter question: but I wyll no farther
speake thereof at this tyme. And as to the
goode armoure, sholde / and swerde, and suche
other thynges / as be some tyme set vp at the
buryal of noble men, some men say / that they
belonge not to the churche, but to the execu-
tours: and that they ought to remayne there
to the honour of the body / and to the remem-
braunce of the soule, as longe as they wyll en-
dure. For there was neuer gyfte thereof
made to the curate / whereby any parysshe
myght growe vnto hym. And a case moche
lyke to these sayenges is in the xx. yere of
kynge Ed. the iiij. where an action of tres-
pas was brought for takynge awaye suche a

coote armour. &c. And there were some of opinion / that the action laye well, howe be yt the case is nat indued: but what so euer the lawe be therin / I thynke yt be no great doubte / but that if a statute were made / that they shulde belonge to the spirituall: that the interest of the curate what so euer he had therto before by presumption / constitution / or other wyse, were determyned: and so me thynketh / that the parlyament maye ryghtely make clayme concernynge suche moueables / as yt may do of any other temporall goodes within the realme, and than as to the nombre of peerses and clerkes / that shulde be bydden to suche buryalls / I thinke / that the parlyament may well vpon a certaine payne prohibite, that none shall call to suche a buriall aboue a certayne nombre of peerses and clerkes to be assigned by the parlyament / after the degree of hym that is buryed, and specially to prohibite, that none shall gyue any money or other rewarde to any aboue that nombre / thoughe they were specified. For suche statutes be for ordrynge of temporall thinges / and so for yt that the kinges subiectes shulde nat be charged, but as the parlyament shulde thynke expedient for the welthe of the realme, and therfore they are

to be obserued in lawe and conscience. And thus I haue shewed the parte of my conceyte, what me thynketh concernynge the saide mocions. Doctour I thanke the for the payne that thou haste taken therin: and yeth thou haste some what touched, what the parlyament maye do in these mocions, which concerneth somewhat the spiritualtie. I praye the, that thou woldest shewe me some what more of thy mynde, what the parlyament maye do in other thynges concernynge the spiritualtie. For I thynke it were good and necessarye to be knowen, for the good ordre of conscience of many persones, and the appesynge of many and great diuersities of opinions in this realme. Student. To treate of that matter at length, it wolde aske a greate tyme: but I shall with good will briefely touche some articles therof, and haply thou shalte by them knowe the better, what the parlyament maye do concernynge the spiritualtie, iurisdiction, and other cause lyke. And I praye the take my mynde in that I shall say, that suche statutes shulde be made, as I shall speake of: for I do entende to that intente, but onely to shewe the power of the parliament, what they maye do, if they lyste to exercise theyr power.

¶ The seconde addicion. What the parlyament may do concernynge the spiritualtie and the spiritualle iurisdiction, and what nat.

Tud. I suppose it may be enacted by the parlimet, that no landes, ne other enheritaunce, shall hereafter be gyuen in to moztemayne, by licence noz without license, but that all feoffementes, fynes, leasses, and recouenies, by youyn oz by assent of the parties hereafter made oz had foz moztmayne, oz to the vse of moztmayne, shal be voyde, and that the house shall take no interest by hit: but that it shall remayne stylle with the feassour oz gyuure, oz to suche other vse, as the parlyament shall appoynte. Foz lyke as the parlyament maye ordeyne / that all feoffementes and fynes, made to any maner of persone shall be voyde, and that euery man shall stande stylle seysed of his lande, without makynge of any alteration of possession therof to any other, moze stronger hit maye ordeyne, that no alteration of possession shall be made in to moztemayne. And that a statute maye be made, that there shall be no alteration of possession of landes to no man, as hit maye

appere

appere by the wordes of Johñ Gerſone in his treatiſe of contractes. the .vi. conſyderacion. where he ſayethe thus. Contractes be nat therfore preſyſely to be ſayde vnlanſuſt and voyde / bycauſe they maye be redemed by the lawe made for ſuche redemption. For he ſayeth. that they that wolde ſaye ſo / wolde condempne the bygge maker of lawes, that is god hym ſelfe: whiche in his iudiciall lawes / gyuen by Moyſes to the Jues (as the texte is open / leui. xxv.) wylleth / that he that ſelleth his enheritaunce, may redeme it. And if he redeme it nat, yet it ſhulde retorne agayne in the yere of Jubilie. For it is there ſayde to the Jewes thus: All the region of your poſſeſſion ſhall be ſolde vnder the condicion of redemption. ¶ And thoughe that lawe byndeth nat nowe Chriſten peopke, yet a lyke lawe therto might be made by chriſten princes, whiche than by that newe conſtitucion ought to be obſerued and kepte / as dieuers of the ſayde iudiciales haue bene in many countreys. Thus far be the wordes of Johñ Gerſon. And me thynketh, that if a lawe myght be made, that if a man ſell his lande, that he may neuer the leſſe redeme hit within certaine yeres / whether the byer wyll or no, thoughe no ſuche condicion were ſpoken of at

the

the makyng of the bargayne: that lyke reason is, that a lawe maye be made, that there shall be no sales, but that euerye man shall continually stande styll seised of his landes, as I haue said before. And I suppose verily, that suche a statute shulde be good and profitable/as wel for them that haue such landes in mortmayne/as for many other. And Valdus de Perusio sayth, that suche a statute shulde be good to prohibite, that no landes shulde come in to mortmayne: but nat to prohibite, that no goodes shulde come into mortmayne. And me thynketh, that his sayenge is good and reasonable.

¶ The thirde addicion, what the parlyament may do concernynge the spiritualtie, and what nat.

Student. I thinke also, that the kynge by parlyment may breke al appropriations, that be made agaynst any statute, or agaynst the good ordre of the people/or agaynste the comen welth/& the cause is this: There can no churche be appropried, but that the patronage of the aduouson therof must be gyuen

before

before the appropriacion to the abbotte, or priour, or other, to whom the appriacion shalbe made, and to theyr sucressours. For if hit be gyuen but for terme of lyfe, the appropriacion can not stande in effecte but for terme of lyfe. And bicause the advouson is a temporal enheritaunce, therfore it is vnder the power of the parlyament to ordre hit, as hit seeth cause. And to kynge hit agayne to be presentable, as hit was fyrst. And in like wyse, if a man kynge a writte of ryght of advouson against hym, that hath suche an advouson appropried to his house, and recouereth the advouson: the appropriacion is dissolued. For the appropriacion can no lenger contynue, than they haue the patronage. And the parlyment may leaue the advouson to the house, as an advouson presentable, if they se cause, or they maye gyue hit to the fyrst gyuer, or other wise dispose it, as the matter requireth. And vnder suche maner all the vicarages that were vnyed, annexed, or appropried, fro the fyrste yere of kynge Richarde the ii. vnto the parlyament holden in the xiii. yere of kynge Henry the fourth, were dissaproued. And by the same statute of Henry the fourth it is enacted, that all vicarages appropryed after the statute made in the pp. yere of kynge Ri-

Richarde, ayenſte the fourme of the ſayde ſtatute, ſhall be diſappropried & eyrepte the Vicarage of Habdenham in the dioceſe of Ely: as by the ſayde ſtatute appeareth. But yet I ſuppoſe that the parlyament maye nat make an approprjacion without ſpirytuall aſſente: ne I meane nat, that hit were good / that all approprjacions ſhulde be broken, but I haue ſpoken this / to ſeeke what auctorite the parlyament hath / if they wolde eyercyſe hit. And if there be a reaſonable conſyderation / why hit is done, than the diſapproprjacion ſtandeth as well in conſcience as in the lawe. And good hit is / that the auctorite of the parlyament be knowen in this behalfe / to the intente that hit maye cauſe them the rather to obſerue ſuche ſtatutes / as be alredye made of ſuche approprjacions, and to diſpoſe ſome parte of the frutes thereof amonge the poore parryſſhens accordynge to the ſtatute of the yere of kynge Richarde the ſeconde, made in that poynte. And if hit were aſked them, why they haue nat obſerued the ſayde ſtatute / they haue none other excuſe, but eyther to ſaye / that they knewe nat the ſtatute, or elles that the ſtatute hadde no power to bynde them to hit. And I ſuppoſe

verily

Verily, that neither of those sentences can be any reasonable excuse vnto them that be that behalfe.

The fourthe addicion concernynge the power of the parlyament as touchynge the spirituallties.

Student. All the seyntuaries in England, as well in theyrches as other, and also where a man shall gyue his clergie, and where nat, be vnder the power and auctozitie of the parlyament. Doctour. I suppose, that yt is by the spirituall auctozitie that a man shall be defended by a seyntuarie, or gyue his clergie. Student. Neyther verely: but by the olde customes and mayntnes of the lawe of the realme. And therfore the kynges Justices vpon nyse, where a man shall haue seyntuarie or his clergie, and where nat. And if the ordinarie wolde nat come to reteyne them, that be cleryes, the kynges Justices may set a fyne vpon hym. And also the kynges pardon shall discharge one, both of the seyntuarie and out of the bysshoppes prison. And so it appereth, that the bysshoppe haue the kepynge of suche, as be admytted to theyr clergie, by auctozitie of the kynges lawes, and nat by theyr owne auctozitie. And though

lawes, and nat by theyr owne auctoritie. And thoughe the title of fryntuarie, and the libertie where a man shall haue his clergie be vnder the power of the parliament, yet the parlyament hath nat broken them / ne extended his boke power on them / to put them generallye awaye: but in perticuler cases some tyme hit hath. Doctour. Mygh̄te the parlyament breake a fryntuarie / that is graunted by the pope? Student. The pope by hym selfe may make no fryntuarie in this realme: but if the kynge and the pope to gether do hit, the olde custome of the realme serueth, as moste men saye / that hit is good. But yet if the kynge after that graunte, by auctoritie of his parlyament auoyde his owne graunte, than remaynethe but onely the popes graunte: and that sufficeth nat to make a fryntuarie / as I haue sayde before: but the parliament without the pope maye make a fryntuarie, with suche penalties as they shall thynke conuenient to set vpon the breakers therof. But if the pope do after confirme that fryntuarie, and graunte that no man vnder payne of the censures of the churche do breake hit: hit is the stronger howe be it the fryntuarie taketh his full strengthe in that case as to the lawe by the parlyament.

¶ The .v. addicion concernynge the power of the parlyament ag-ainſt the ſpiritualtie.

Thirdly. I ſuppoſe alſo / that the parliment may aſſigne all the trees and greſſe in churcheyardes either to the perſone, to the Vicar, or to the parysshe, if they ſe cauſe. For thoughe yt be hallowed grounde, yet the freeholde therof, the trees / and herbes are thynges temporall / as they were before the hallowynge: And that the parlyment hath power to ordre them (as is ſayd before) it appereth by a ſtatute that is called Statutum contra rectores, ne proſternant arbores in cœmiterio, that is to ſay, the ſtatute againſt perſone, that they ſhall not rutte downe trees in the churche yardes. In whiche ſtatute it is excepted, that the ſoyle of the churche yarde, whiche in the lawe of Englande is called the freholde, belongeth to the churche. And than the ſtatute goth farther / & prohibiteth all perſons, that they ſhall not ſel them, but it be for the neceſſary reparacions of the chauncell / but that they ſhall ſet them ſtande ſtil to defende the churche fro the great tempeſtious wyndes and weather. and than it ſemeth,

sentith, that lyke as the parlyment hath auc-
toritie to prohibite persones / that they shall
not fell the trees in the churche yarde, whan
they wolde / that it hath auctoritie as well to
take the hole propertie of the trees fro them
if they se cause, and that they may gyue them
to the parysshe, if there be a reasonable cōsi-
deration to moue them to it. And yet neuer
the lesse / the iuges for a churche yarde wyll
most commonly put the cause out of iurisdic-
tion / and remytte it to the spirituall lawe, to
determine to whom it belōgeth of right, but
I take that to be by a custome / and a fauour
of the lawe, and out of a mere equite / as of
the lawe of god. And therfore if the parlia-
ment wolde ordeyne / that the right of chur-
che yardes / and of all thynges in them shuld
be tried in the kynges courtes, I thynke the
statute might well do it. But as I haue saide
before / the parliment wyll not extende their
power to many thynges / that they myght do
if they wolde / and specially in these matters
I thynke they wyll nat. For surely as well
the parliament as the kynges courtes / of the
kinges benche & cōmon place, & all the cōmen
lawe (as I suppose) haue ben & be as fauo-
rable to the spirituall iurisdiction / as well in
suche churche yardes, tithes / offrynges / & such

other as any lawe hath ben: in so moche that in the kinges benche a comen place they wolde suffre no issue to be ioyned specially betwixte person & person, whereby the ryght of the tythes myght be tried: howe be hit that in the escheker sometyme they have done other wise. And for a further proofe, that the parliament maye ordre a churcheyarde and trees and grasse/as is afore sayde; some make this reason/ they saye hit is enacted by the statute of Ric. the .ij. the xv. yere, and the .xv. chapitre, that landes that be made churcheyardes, and be halowed and made burialles without licence of the kynge and chefe lorde, shall be in ease of mortemayne. And they saye, that of that it folowith, that if the kyng or lorde entre, for that the churche yarde was made agaynst the statute/that the halowynge ther by is adnulled: for ells (they say) the statute shulde be voyde. And if the statute have power to adnulle the halowynge/made against the statute, they saye more strenger hit maye ordre the trees and grasse/that be growynge upon it, bycause they be temporall/as is said before. And in that case if the lorde enter by reason of the statute, and the person putteth hym out, and the lorde bringe assise, and the persone pleadethe, that it is a churche yarde,

and

and hemamme judgement if the courte shall holde plee therof. and than the lorde Bennett house be entred by force of the sayde statute, and pleadeth in courte, that is a good plee to gyue the courte jurisdiction. And thus I suppose verily, that the parlyament may pardon the treson, and yet in a churche yarde, as I haue sayde, and yet the grounde to remayne styll hallowed as it dyd before.

The fyfte addicion concernynge the power of the parlyament ouer the spiritualtie.

Student. I suppose also, that it maye be enacted by auctoritie of the parlyament, that if a spirituall man suffer his houses to decay and dye: that his successour shal haue remedye in the kynges courte, against his predecessours, & that it may be prohibited, that no suite of dilapidation shalbe hereafter taken in the spirituall courte, for it is thought to haue remedies for the waste and decay done in houses by his predecessour, whiche is all temporal, & belongeth to the kynges courtes, as wastes

and treſpas do. And ſome be it, that no ſuc-
tion lyeth for the ſucceſſour in ſuche caſe for
the waſte at the common lawe: yet that is
not ſufficient to proue, that an action may lye
therfore at the ſpirituall lawe. For if a pre-
ſone of a churche make a leaſe for terme of
yeres, and the leſſee doth waſte, in that caſe
the perſon ſhall haue no remedy at the comen
lawe, and yet he ſhall not therfore haue any
remedy at the ſpirituall lawe. And alſo in
diuers ſtatutes it appereth, that if a man haue
iugement in the ſpirituall lawe to do penance
as is enioyned hym, that the iuges ſpirituall
maye not tourne that penaunce into money,
oneleſſe the partie wyll freely aſke it: leeſte
they myght by that meanes gyue iugement
of temporall thynges. And if they may not
tourne penaunce into money, but by the fre-
wyll of the partie, than more ſtrongly they
may not holde ple in this mater, where none
other thynge is in variance but waſt of bon-
fes, and where are demaunded damages, as
doth in the prohibition of waſt at the comen
lawe. And that more ſome me ſay, that a pre-
munire facias or a prohibition lyeth in this
caſe at this day, if the grounded of the lawe
were thoughte yoked vpon: Howe be it by a
cauſe of the cuſtome ſo large vſed and ſuffred

to

to the tēporary, paraduenture it were nat good to alter the lawe therin without parlyment/ but they thynke verily that the parlyament may well alter it. And to enforce theyr reason they saye, that sythe the courte Christien maye nat by the lawe awarde damages for beatynge of a clerke/but only to put hym to penaunce for layenge violente handes vpon the clerke/that moze straūger they may nat in this case awarde damages for the wast, that is nothynge els but a tēporall offence.

¶ The.vij. addicion concernynge the auctorite of the parlimēt & the spiritualtie.

Student. If it were ordeined by statute, that no prelate shulde weake any cloth make out of the realme/ nor a bone suche a price, vpon a certaine payne/ or that marchaūtes shal nat take aboue so moche for their salary/ I suppose that these statutes were good/ bycause they concerne the ordrynge of tēporall thynges: but to appoynte the fassyon of theyr garmentes or of their tonsure, it is more doute whether the parlyment may set any peyne vpon it or nat. Doctour. It hath nat ben seue/that any penall statutes haue bene made by parlyament concernynge

apparel of the clergie in this realme, for that hath alwayes ben ordred by the conuocation. And also hit appereth in the statute made in the xxvii. yere of kynge Ed. the iij. the viii. chaptre / that whan defaute was founde by the comons of excessiue wages of chapleyns that the parliment dyd nat ordre the wages: but the kynge and his lordes / at the peticion of the commons, moued the archebysshop of Caunterbury therof, and therevpon he and other bysshoppes afterwarde enformed the parlyament, that they had sette the wages in certayne, and that no chapelayne shulde take more than they had appoynted, vpon a peyne by them lymytted. And if any spirituall men gaue more, they to forfayte the double to certayne vses by the conuocacion appoynted. And that no chapelayne shulde remoue from one diocese to an other without letters of dimissarie / from whose diocese they remoued. And it was than ordeyned by the parlyment / that no temporall man shulde gyue more wages than the bysshopp hadde assigned, vpon payne to forfayte as moche to the kynge: as in the said statute appereth. And also the statute wylleth farther / that he that fyndeth hym greued agaynst that ordynaunce / shall haue his remedy in the Chacery,

but

but if appeareth nat, that there shulde be any remedy thervpon at the commen lawe. Student. The vertue of spirituall men and the fauoure of the realme vnto them / and theyr wysedome / polycie, and bigge auctoritie be and haue ben great in this realme: wherby many thinges haue ben forbone, that might lawfully haue ben done / as I suppose. And in the statute made in the .i. yere of kynge Henry the .v. wages of chaplayns were sette in certayne by the parlyament. And trouth it is, that by the sayde statute of .v. Henrici. Vi. the .iv. chapture / it is enacted / that who so euer fyndeth hym greued agaynst the sayde ordynaunce, made of the sayde wages, shall haue remedy in the Chancery, as thou sayest. And therfore it folowyth therupon / that if chaplaynes may by auctoritie of the parlyament be lawfully put to answere in the Chauncery before the Chancellour, whiche spirituall there onely by the kinges auctoritie, that they may as wel vpon a reasonable cause be put to answere by auctoritie of the parlyament after the processe of the commun lawe. Doctour. By sub pena, whiche is the processe vsed in the Chauncerie / the persone shall nat be arrested / but be onely warned to appere. And it is directely agenste the canons, that a

preest shulde be arrested, and parauenture at the makynge of the saide statute the parlyament had respecte thereto, and thought hit reasonable, that they shulde rather be put to answere in the Chancery, where their bodies shulde not be arrested / than at the common lawe, where they myght be arrested. Under. Thought the persone shall not be arrested by a sub pena, yet if he appere not in the ende he shalbe prorlamed rebell / and than therupon his bodye shall be arrested. And also if the partie wyll not performe the iugement gyuen upon a sub pena, there is none other execution in the Chauncerye / but to commytte hym to prison tyll he haue performed it. And therfore (as it semeth) the parlyament regarded not that point. wherfore I suppose rather / that the statute was made as to that article upon this consideration / that because upon a decree made by the conuocation, there is the no action at the common lawe, but at the spirituall lawe, and because this matter concerned gyuynge of wages, whiche were thynges temporall, hit was thought reasonable / that the offenders agaynste the decree made in the conuocation / shulde be putte to answere in the Chauncery / whiche is the kynges courte: But hit myght

as wolde haue bene enacted / that they shulde haue bene putte to answeare at the comon lawe as in the Chaunterye / if the parliament wolde / as I suppose. But to that poynte / that thou haste spoken of before, that hit is agaynste the canons of the churche / that a prieste shulde in any caase be arrested, the common lawe pretendeth / that the kynge as in the ryghte of his crowne / and by his common lawes hath that auctoritie / and so hit is dayly put in execution.

And if the common lawe be so all redy, than there nedethe no statute to be made of hit. Neuer the lesse bycause our entente nowe at this tyme is to speake onely / what the parliament maye do concernynge the spiritualtie, and what nat / therfore I wyll no farther speake of that matter but onely this, that if there be offence in them, that execute the common lawe therin, that is a greatte meruayle, that spiritualt men haue done no more to reforme hit, then they haue done: and if there be no offence therin, than were it good / that hit were so openly knowen / that all scrupulositye of conscience myghte be auoyded. For as hit standethe nowe, there resteth in some persones, that execute the lawe therin, a doubte in conscience: And by reason

of

of that doubte they offende / that shulde not offende / if the matter were playnly declared. For than wolde they either playnly cease / or elles procede accordynge to the lawe with good auctorite.

¶ The viij. addicion concernynge the auctorite of the parlyament / the spiritualtie.

Student. If there were a scisme in the papacye / who were rightfull pope / the kynge in his parlyament / as the hygh gouernynge power of the people / ought not onely charge on the bodies / but also on the soules of his subiectes / hath power for the quietnes and sauetie of his realme to ordeyne and determyne / who shall be in this realme holden for rightfull pope / and maye commaunde / that no man spirituall nor temporall shall name any other to be pope / but hym that is so auctorysed in the parlyament / ne sue to any other as pope / but onely to hym. And a statute of like effecte was made in the .xj. yere of kynge Richarde the .ij. the .xij. chapter / where pope Urbane was adiuged in the parlyament to be lawfully chosen pope. And sythe the parlyament / for

 ore

apeffynge of diuiſions / that myght ryſe in the
realme by ſuche a ſeiſme in the papacie / may
ſette a remedy : why than may nat the kynge
and his parlyament in lyke wyſe / as well to
the ſtrength of the fayth and to the helthe of
the ſoules of many of his ſubiectes / as to
ſaue his realme from beinge noted of hereſy,
ſerche the cauſe of ſuche diuiſion / as is nowe
in the realme by diuerſities of ſectes and opi-
nions : and to knowe alſo by whom, and by
what occaſion the noiſe hath ryſen / that there
ſhulde be ſo many hereſies in this realme, as
are noted to be : And whether there be ſuche
hereſies or nat, & nat to put any to anſwere
therypon after the proceſſe of the lawe : but
charitably to examine the trewth therin, and
therupon by theyr wiſedomes to deuiſe ſome
charitable waye for vnitie and peace. And
great rewarde ſhall they haue of god, that
putte to theyr handes to auoyde the great
daunger / that is lyke to falle to many ſoules
as well of men ſpirituall as tempozall / if
this diuiſion continue longe. And as fayre
as I haue herde, all the articles that be my-
ſtyked in this behalfe, ſomme eyther agaynſte
the woldely honoure, woldely power, oz
woldely ryches of ſpirituall men : but to ex-
preſſe the articles I halde it nat myſte expe-

dient.

bient. And verily if it be true that some haue
repoꝛted, many of them be so farre agaynste
the treuthe, that I suppose no chꝛisten man
wyll holde them, beleuyng them to be true:
but that they do it foꝛ some other considera-
tion. And thoughe they do nat well in that
doynge, howe good so euer the consideration
be; foꝛ no euyll is to be done, that good
shulde folowe: yet they do nat so euyll, as
if they helde them, beleuynge them also to
be trewe / ne hit wyll nat be so harde to re-
moue them fro it, as it wolde be / if they dyd
beleue them in dede. Foꝛ if hit be so, that
they beleue them nat, than the cause remo-
ued, hit is to thynke / that they wolde lyghtly
be reformed. And therfoꝛe if hit were
ordeyned foꝛ a lawe: that euery curate at
the dethe of euerye of theyꝛ parryshens /
shulde saye foꝛ theyꝛ soules in audience Pla-
cebo and Dirige, and masse, without ta-
kynge any thynge therfoꝛe: and that they
shulde also at a certayne tyme there to be
assigned by parlyament, as hit were ones in a
moneth, oꝛ as shalbe thoughte conuenient / do
in lyke wyse, and prayse specially foꝛ the sou-
les of their parryshens / and foꝛ all chꝛisten
soules / and foꝛ the kynge and the holle re-
alme / And religious houses to do after the

same

same maner / I suppose / that in short tyme there wolde be but fewe, that wolde saye, there were no purgatorie. ¶ And in lyke wyse if hit were ordred so by the pope / that there myght be certayne generall pardons of fulle remyssion in diuers parties of the realme, whiche the people myght haue for sayenge of certayne orysons and prayers / without payenge any money for hit / hit is nat vnlyke / but in short tyme there wolde be very fewe / that wolde synde any defaute at pardons. For verilye hit is a greatte comforte to all Christen people to remembre, that our lorde loued his people so moche, that he wolde to theyr relyefe and comforte, leaue behynde hym so greatte a treasure: as is the power to graunte pardons: whiche ga I suppose nexte vnto the treasure of his precious body in the sacrament of the alter, may be accompted amonge the greatteste. And therfore he labored greatly to his owne hurte, and to the great hewynes of all other also, that wolde endeuer hym selfe to proue, that there was no suche power leefte by god. And I suppose verily that if suche free pardons were graunted (as I haue spoken of before) and that than other pardons were afterwarde graunted, to haue the ayde

of

of the people for some reasonable cause, as to resyste the Turke, or suche other: that the people wolde as diligently serue those pardons, to be partakers of the good dede, as they wolde be / if there were no suche free pardons graunted before. And I thinke verily, that if the kynges grace / and his parlyament / loke not vpon these matters, it will be herde to tell / who shall be able to do it.

¶ And vnder this maner Nectanus kynge of Pictes toke great labour and diligence for the appesynge of the diuision and varyaunce / that was amonges his subiectes (as well spirituall as temporall) for the due tyme of keppynge of the Ester. For some men in that varyaunce kepte Ester / whan other kepte palme sonday, and that was seen some tyme in one house. In whiche scisme many great clerkes and holy men were of seuerall opinions / in so moche that the blessed man saynt Aidan / whiche was a holy bysshoppe, erred longe in the due tyme of keppynge of Ester / and had many folowers / and yet was he no heretike. For that that he dyd therin, he dyde with mekenes, and as he thought he rode accordyng to the trouthe: and therfore there was but litell offence in hym. For appeasynge of this scisme / the sayde kynge

Nectanus

Quitanus sent messangers to saynt Colfryd, then beinge abbotte of the monasteries of saynt Peter and Paule, that be vpon the ryuers of Tyne and Twede, and where as Scotte asse wede was brought vppe, to be instructed in the due tyme of kepyng of Ester, and of the tonsure of therhes, which was than also in varyaunce, wherupon the sayde holy man Colfryde wrote a letter vnto the said kyng Quitanus, declaryng vnto hym by many auctorities of scripture, the very due tyme of keppynge of Ester, and shewed his mynde also in the sayde tonsures, and when the sayde letter was redde before the kynge and his lordes, & that the tenure therof was playnly interpretate and declared vnto hym, he rose vppe from amonge his lordes, and kneled downe vpon his knees, and thanked almyghtye god, that had sente hym suche a gyfte out of the countreye of Englande. And it is nat to thynke, that he dyd thus intendyng to gyue sentence therin by his owne auctorite, for that belonged nat to hym, but he dyd hit to knowe the trouthe, and that he myght therupon shewe his fauoure to the better parte. And if the kynges grace wolde in this case endeuer hym selfe to knowe the trouth of the cause of this diuision, I suppose

that he ſhall in ſome article ſpeake his fanoure to the one parte / and in ſome other article to the other parte. Alſo whan the hereſie of Eutices roſe at Conſtantinople, whiche erred in the trinitie, the bleſſed man ſayne Theodore, than archebyſſhoppe of Canterbury, to the intēt he wolde kepe the ſhurehe of Englāde fro that errour / gathered all the clergie to gether, and examined them diligently what they thought concernynge the articles of the hereſie. And whan he founde them all ſtedfaſte in the catholyke feythe / he wrote a letter of their beleue: and for inſtruction of them that ſholde come after, ſent it to Rome. And the effecte of this letter was this.

We beleue and conſtātly confeſſe after holy fathers / to be verily and truely the father / the ſonne and the holy gooſte / a Trinitie in vnitie, and a vnitie conſubſtantial in Trinitie, that is one god in thre perſones conſubſtantiall of equal glorie and honour.

And amonge other thynges that he wrote, whiche pertayned to the feythe / he ſayde afterwarde.

We alſo accepte the holy and vniuerſall fyue ſynodals of holy fathers: and we accepte and glorifie oure lorde Jeſu Chriſte, as they glorified hym / nothynge addynge

nor

noz dymynyſſhyng. And we glorifie god the father without begynnynge / and his ownely ſonne, gotten of the father before the worldes / and the holy goſſe procedynge of the father and the ſonne ſo as can nat be ſpoken: as they / that we haue remembred / the holy apoſtels and prophettes and doctours haue preached and taught.

And me thynketh, that theſe exaples ſhulde ſome what encorage them / that nowe maye do good in this euyl and perylloue tyme, to folowe ſome what after, and euery man / after as his degree is / to do the beſt that he can therin to helpe hit, nat regardyng worldely honoure, worldelye ryches / noz ſynguler profite: but onely the honoure of god, and the loue of theyr neyghbours / and helthe of theyr ſoules. And if they do ſo / vndoubtedly the warke ſhall ſpoſpere well in theyr handes. And lette no man, that maye do good in this matter, ſuffre it to ouer paſſe as thoughe hit pertayned nat to hym: For almyghty god hath gyuen a comaundement to euery man vpon his neyghbour. And to encorage them ſelfe yet the moze vnto it, lette them remembze the wordes, that be ſpoken in the fyrſte booke of the reuelations of ſaynte Bzygette, the .viij. chaptre / where

our lorde Jesu amonge other thynges sayde to our ladye thus: I wolde (sayde he) if it were possible, suffre for euerye man suche a payne as I ones suffered for all men vpon the crosse, so that they myghte comme to the inheritaunce promysed. Happye be they than, that helpe soules to that inheritaunce, that our lorde desyrethe so moche to haue them comme vnto. And sometime it hath ben brought aboute by fayre meanes, that coulde nat be done by vigour and compulsion. And if my lordes and maisters spirituall wyll nedely forthe with theyr strayte corrections and punissemetes / without finding some prouision, that the myndes of the people maye somme what be eased, in suche thynges as they haue mysliked and grudged at in times past: it is to feare, that there wyll nat folowe so good frute of it as there wolde do, if they wolde do it, & that they wolde shewe them selfe euidently to do nothyng but onely of a zele and loue vnto the people. And it is a doute to some men / whether some of the thinges that the people mysliketh and fynde defaute at / be occasions actiue or passiue to the people to offende. But whether they be the one or the other, charitie wolde (as it semethe) that some diligence shulde be put to moue them /

though

thoughe perchaſe they worke nat euyll but ine
differēt/or paraduenture good of them ſelfe.

¶ The .ſy. addicion concernynge
the auctoritie of the parliament
and the ſpiritualtie.

STudent. If it were enacted
by the parleament, that if a
man calle an other theſe or
murderer, that an actiō ſhuld
lye therupon at the common
lawe/and that no ſuite ſhulde
lye therupon at the ſpiritualt lawe, I thynke
it were a good ſtatute, for the matters wher-
upon the wordes ryſe, are onely to be deter-
mined by the commen lawe. And ſo it is, if a
man call an other villayne, an action lyethe
theron at the commen lawe if he be free, and
nat at the ſpiritualt lawe, bycauſe the rygh̄te
of the villenage may nat be tryed but at the
cōmen lawe/and moſte man ſay, that if there
be an inditemēt of felony at the cōmen lawe:
that than there lieth̄ no ſuite therof in the ſpi-
ritualt lawe/ ſo that there nedeth̄ no ſtatute
to be made in that poynt. Doct. If a ſtatute
were made/that an action ſhulde lye at the
commen lawe of ſuche wordes as a man hath

any losse or iniurie thereby ensuynge by reason they haue before tyme bene vsed to be sued onely in the spirituall courte: thynkest thou the statute were good? Student. I thynke the statute were good / and moste comonly vpon suche wordes some wordely losse or hinderaunce one way or other dothe folowe, but I thinke that in thes cases the partyment may not prohibite, but that they that lyste may also take their sutes at the spirituall lawe, if they wyll, so that the spirituall lawe make no recompence to the partie. Also of all annuities, whether they haue beginninge by prescription composition real or other wyse, I suppose it may be enacted, that the sute shalbe taken only in the kinges courte, and not in the spirituall court, for nothyng is to be recouered in suche sutes but money, whiche is temporal in whose handes so euer it come spirituall or temporall.

¶ The tenthe addicion concernynge the auctorite of the partyament as to the spiritualtie.

Student. If it were enacted, that no religious person shuld receiue into the habite of their religion any childe vnder a

certaine age to be appointed by the parlimēt, and that after his entre he shuld nat be remoued fro the place that he was receiued in within a yere after vpon a certayn payne without assent of his frēdes: I thinke it were a good estatute, for that statute shulde nat prohibite entre in to religion. For if it dyd so, I suppose it were nat to be obserued: but it ordereth the maner of entre in to religiō, for suche infantes / whiche is right expedient for the cōen welthe. And a statute of lyke effecte is made for the iiij. orders of freres in the iiij. yere of king Henry the iiij. where the iiij. Prouinciales of the said iiij. orders were swoorne, by layenge their handes vpon their breastes in open parlyament to obserue the sayde estatute. And vpon the same grounde some saye / that if it were enacted, that no man vpon a certaine peyne shulde affie the daughter in her fathers house / without assent of the father, it were a good statute: and yet a statute hath no auctorite to prohibite nor to conforme no rygh̄te of matrimonie: but as the churche prohibiteth it, or confermeth it. And therfore if it were prohibited, that no lordes sonne shulde affie an housbandemannes daughter, or suche other / and if he dyd thaffiawnce to be voyde. I thynke that

ſtatute were voyde. But if the ſtatute were that no lorde ſhuld vpō a peyne / make affiance with any woman / that is a ſtranger borne / without the kynges licence / I thynke that ſtatute were good / for it prohibiteth nat matrimonye / but ſetteth an order after what maner it ſhall be made / and that vnder ſuche forme as maye haply be neceſſarye for the ſurete of the realme. And of a lyke effecte therto is the lawe / that the kynges wyndowe ſhall nat marye without the kynges licence / and that he ſhall be ſworne therto in the Chauncerye whan he is endowed. And lyke lawe is alſo / that the lorde ſhall haue the mariage / or the value of the mariage, or ſome tyme the double value of the mariage of his warde by knyghtes ſeruice. And alſo if a man marye a bonde woman without lycence, the lorde by the commen lawe ſhall haue an action of treſpas agaynſt hym, that maryeth her. And all theſe lawes be good, for merely they prohibite nat mariage, no more ſhulde a ſtatute do for entre into religion / as me ſemeth. For he prohibiteth nat entre into religion. But he prohibiteth that none ſhalbe reteined in to the habite before his yeres of diſcretion, and that after his entre he ſhalbe ordred in ſuche maner, that if he will after be

profeſſed / it ſhall vſe of his diuine ſeruyce, and of a deuout a ſeruaūt god: and not by any ſiniſter meanes nor coloured perſuaſions.

Alſo as I ſuppoſe, the parliament may worke & make a ſtatute, euery man / that hath the profite of any offeryng by reſourſe of pylgremes, ſhall vpon a certayne payne, nat onely ſet vp certayne tables to inſtructe the people / vnder what maner they ſhall worſhyppe the ſayntes, but alſo to cauſe certayne ſermons to be made there yerely to inſtructe the people howe they ſhall worſhyppe them; ſo that through ignorance and diſordryng of them ſelfe, they do nat rather diſpleaſe the ſayntes, than pleaſe them.

It may alſo prohibite / that no myracle ſhall be noyſed vpon ſo lyghte occaſions as they haue byne in ſome places in tyme paſte. And that they ſhall nat vpon a certayne peyne be ſet vp as miracles, ne be noyſed / nor reported as miracles by no man, tyll they be proued for miracles / vnder ſuche maner as by the parlyament ſhall be appoynted. And yit is nat vnlyke / but that many perſons grudge nat at the abuſion of pylgremages than at the ſelfe pylgremages. And in lyke wyſe of dyuers other articles, if the trewthe were groūdedly ſerched. And vnder this maner if

hath ben alredy enacted by parliament, to the
strength of the feythe, that no man shall pre-
sume to preche without licēce of the diocesan
except certaine persones excepted in the sta-
tute, as appeareth in the seconde yere of kyng
Henry the viij. And vnder this maner the par-
liament may ordeyne many good lawes for
strength of the faith, and for the good ordre
of all the people in both spirituall matters
temporal, though it iudge not vpon the ryght of
thynges that be mere spirituall. And al these
diuersities and many other more then I can re-
herse nowe, they that be lerned in the lawes
of the realme be speciallly bounden to know,
that they may enstructe the parlyament what
nede shall require, what they may lawfully
do concernynge the spirituall iurisdiction /
and what nat. And therfore spirituall men
are bounde charitably to here their opinions
therin / and what they thynke be immediatly
grounded vpon the lawe of god / or vpon the
lawe of reason, and what nat. For comonly
the parliament hath ouer the lawes no direct
power / but to strengthen them / and to make
them to be more surely kept / it hath good po-
wer. And if spirituall men and temporall men
wolde charitably lay their hedes to gether, &
fully determine what the parliament may do,

we doe concernyng the spirituall iurisdiction as the temporall, takyng these additions as litle stryngers, whereby they by theyr confessions may tak to their remembrace greatter thinges, so that hereafter it shall not stonde in the case as it doth nowe, that whā the parliament hath made a lawe concernyng the spiritualtie, that spirituall men shall not say / it byndeth not in conscience / as many haue done in tyme paste, and yet do to this day. I thynke verily that there wolde nothyng do more good to appese the variances / sectes, and diuisions as be nowe abrode in the realme. And thus also wolde al men / as well spirituall as temporall rather take hede to theym selfe, to se that they gyue nothing no tyme occasion to the parliament to extende his power vpon them or their possessions / than to resist or denye the auctoritie of the parliament.

¶ The .vi. addition concernynge the auctozitie of the parliament and the spiritualtie.

DOctour. whether may the parliament prohibite, that no ordinary vpon a certayne payne shall admyt none to the order of preesthode / except he be sufficiently lerned?

neb e Smid. Ham in doute in this question/ and the thyng that causeth me to doute therin is this, if it were enacted, as thou sayest, that after an action were brought upon the penal law, and the ordinaris whiche pleede/that parties were able prestes/were sufficiently learned, And therupon an issue were ioyned, that issue shulde be tried by .xii. men, and as it semeth it were not reasonable, that .xii. men, whiche almoste be vnlerned/shulde trye whether a man were sufficiently learned to be a prestes/ for they have no knowlege therin. And therfore if any suche penalte shulde be sette by parlyament, it semeth that it must be further enacted/that if the issue were ioyned (as is sayde before) that than it shulde be tryed by spirituall men/or temporall men that be sufficiently lerned therto, or by bothe. Doctour. What thynkest thou than, that the parlyament maye ordeyne, that spirituall men shall be compelled to passe vpon enquestes? It semethe that were agaynste the lawe of god, and against the perfection of their ordre/and to breake them from the deuocion of contemplation, that is requisite to them. For sayne Paule sayethe in his seconde epistle to Timothee/the seconde chapetre. Nemo militans deo, implicat se negocijs secularibus, that

is to

is to say, Let no man, that hath set hym selfe to serue god, inbyde hym selfe with seruyle busynes, whiche wordes be specially spoken of prestes. And therfore hit semeth, he shulde do agaynst the sayeng of saint Paule, that wolde compelle prestes to go vpon enquestes. Student. Verely there is a writte in the regestre (whiche is a boke of the lawe of Englade) that no Sheryffe shall empanell any preest vpon any enquest, and that writte may euery preest haue, that wyll sue for it. And I thynke veryte well, that that writte is grounded vpon the lawe of the realme: takynge in that poynte his effecte vpo the lawe of god. And therfore I thynke, that the parliament maye nat enacte, that prestes shuld go vniuersally vpon enquestes: but to enacte that in this special case, whiche is nat mere temporall, but to enquere of the sufficiencie of lernynge, and that to a good and a necessarie purpose, I suppose the parliament maye assigne them to it without breakynge the libertie of the churche. and so there be many tymes vpon a writte to enquere de iure patronatus, where prestes and laye men shall be ioyned togethet to enquere of the ryghte of the patronage. And me thynketh, they myghte do in lyke case here, either by them

them selfe or to be ioyned with kaye men.

Doctour. There they be called by the auctoritie of the ordinarie/and here they shuld be called by the temporall auctoritie. Student. whether they be called by spirituall auctoritie or by temporall auctoritie, their busines is all one. For as great letis it to devocion and contemplation/whan they be called here to by the bysshoppe/as whan they be called therto by the kynge. And thoughe/as thou sayest, the bysshoppe shall comaunde them to appere in that case, yet hit is by the kynges lawe, that he shall do so: whirhe lawe the convocation maye not alter ne chaunge, but the parlyament mygh̄te chaunge hit with a cause: For it pertayneth to the ordeynge of temporall enheritaunce/that is to say, to the ordeynge of the patronage, and of presentmentes of advousons, whiche be temporall.

Doctour. I can in no wyse se howe it maye stande with the lawe of god/that the parlyament shulde compell spirituall men to go vpō enquestes. And therfore if suche a statute shulde be made, the enqueste must be taken all of temporal men, that have sufficient lerning therto: and yet I regarde nat this poynt so moche in this questiō/as I do that the matter of it selfe is so mere spirituall/that the par-

lyment

parment hath no power to sette any payne vpon hit. For as hit semeth, if hit myghte do that, hit myghte as well sette a payne vpon the tonsure of clerkes / or vpon the order of the service / or what vse they shulde kepe, and that I suppose thou thynkeste hit maye nat / and me thynketh hit may no more do hit in this case. Studens. I thynke well hit be as thou sayest in those cases: but in this case, that is so necessarye for the good order of the kynges subiectes / and for the common welthe / me thynkethe, they maye / for if curates haue vertue and counnynge / commonly the people be vertuous / and vertue is the moost chiefe and principall braunche of the cõmen welthe. And therfore for encreace therof / me thynketh / that the parlyament may well sette a payne, although there were no spirituall lawe made in that poynte before, as well as hit may of infantes, that be receiued in to the habite of religion, where of mencion is made before in the tenthe addicion. But in this case sythe the spirituall lawe is all redye, that none shall be made prestes, but that they be sufficiently lettered, me thynketh that the parlyament may mothe more the rather do hit. And therfore, if the people wolde nat assent to kepe an holy day /

that

The vi. addicion touchynge the auctoritie of the parliament and the spiritualtie.

Doctour. It was asked of me but late, if certayne wast groundes, longe of wast never any profite taken, and that lay within no parysshe, but in some forreste, as that

to nebuly tenure fro the kyng / ferre knowyng the to certayne lande / whether the parlyament myghte appoynt / who shulde haue the tythe therof. And he that asked me the question, thought it myghte well appere the seruice me thought / what thou thenkest therin.

Studens. I thynke that if the freholde be in the kynge / that he may assigne the tythes therof to whom he wyll. And if the freholde be in a comon person / that he may do lykewyse. But than I thynke, that if that comon person do not assigne the tythes so, as he may stande conuenyently to the mayntenaunce of the seruice of god / that the parliament may by lawe and order the tythes to the encrease of goddes seruice, as they shal thynke conuenient.

Dialogus. I can not se / howe the pliament, ne yet the partye shulde haue auctoritie to medle with tythes, that be spiritual, and pertayne alway to the spiritual iurisdiction. And therfore I suppose that in this case there be two doubtes / as touchyng heed vnder the spiritualtie / shulde in this case haue the ordrynge of the tythes / as thynges spirituall / to whom none other hath right? and neither the kyng, ne no common persone.

Studens. Though tythes be spirituall, yet the assignement of the tythes to other is a temporall acte / whiche

the parliament with a cause may ordre / as it maye do all tempozall thynges within the realme. And that the kynge / oz any other / that hath the freholde of surhe wast groundes as be in no parisshe: may assigne ꝑ tithes theu of to whom they woyll / it may appeue thus. Before paryssbes were deuyded, and before that it was ordeined by the lawe of the churche, that euery man shulde paye his tithes to his owne churche: euerye man myght haue payde his tithes to what churche he wolde / and myght one yere haue gyuen hit to one churche / and an other yere to an other: oz haue graunted them to one churche foz euer, if he wolde. And lyke as euery man, before the sayd seueryng of paryssbes, myght haue gyuen his tithes to what churche he wolde, bycause he was bounde to no churche in certayne: so maye they do nowe, that halle landes, that lye in no paryssbe: foz they be at libertie to assigne them to what churche they woyll / as al men were before the sayde lawe made, that tithes shulde be payde to the pzopze churche. And if thartchebyssbop shulde haue ryght to them, bycause no man can of ryght clayme them: thanne before the sayde lawe made, archebyssboppes had right to al the tithes within theu pzouinces: foz no man had

hadde right to any tithes / but by thassygne-
ment of the owners. And therfore if the
fre holde, in this case that thou haste put, be
in the kynge, than he shall assigne the tithes,
where he wyll: and in like wise of other of
his subiectes, as I haue sayde before.

Doctour. Thou speakeste in this case, as
thou were lerned in the spirituall lawe, for
these matters perteyne therto / and nat to
the lawes of the realme.

Student. I speke
therin accordynge to the olde lawe and cu-
stome of the realme, whiche yet contynueth
in suche places, as be out of any paryssh, as
yf ydde before paryssh es were kympted,
and before the sayde lawe was made, that
tithes shulde be payde to theyr proper chur-
thes: And that there is suche a custome, part
ye it appereth in a case, that is in the lawes
of Englande / whiche happened longe tyme
syth the sayde lawe was made, that tythes
shulde be payde to theyr proper churches.

Doctour. I pray the shewe me what case
that is.

Student. In the xvii. yere of kynge
Edwarde the. iij. in the boke of assise it ap-
pereth / that the kynge graunted the tythes
of certayne affertes, that were newly taken
out of the forest of Rocke / to a prioresse, and
he therupon brought a Scire facias agaynst

diuers / that take the said tithes, vnto the Chancerie: and there exception was taken / that the suete pteyned to the spirituall courte, and nat to the Chauncerie: and hit was aunswered agayne, that that was to be vnderstande / where the sute was taken as gaynst them / that aughte to pape the tithes / and nat where it was brought against them, that were wrongefull takers of the tythes. And therupon the defendauntes were put to answere / and pleded to an issue, whiche was sente downe in to the kynges benche to be tried accordinge to the lawe / and there the defendantes made defaute: wherupon the playntiffes prayed execution. And in this case Thorpe sayde, that the olde lawe hath ben alway / that the kynge in suche case shuld assigne the tythes where he wolde. And that sayenge J take to be vnderstande, where the freholde is in the kynge, as J haue sayd before. And thoughe the said case be nat iuged, yet it appereth therby / that the kynge made assignement of tithes / whiche was admitted to be good, so that the parliament shall nat nede to medle therwith, onelesse it be his pleasure to assigne them by auctorite of his parlyment: as he may do / if he wyll / to make his letters patens to be of the more higher

recorde

were made, than they shulde be without the parliament. Doctour. Trouthe it is / that the kynge and other owners and possessioners of lande somtime payed their tithes to what churche they wolde: but whan it was ordeyned by the churche / that tythes shulde be payde to their owne church: than the people were bounden by that ordinaunce to paye them accordynge/and so they dyd. And therfore if there were a lawe made nowe by the churche of suche particuler tithes / as yet we mayne styll out of any paryshe / that they shulde be payde to the paryshe nexte adioynynge/or to the ordinarie, or to the Metropolytan, or in suche other maner, as the churche shulde thynke reasonable: me thinketh it were a good lawe, and oughte to be obeyed as well of tho particuler tithes / as hit was fyrste of all tythes generally. And if the churche maye make a lawe therin / than me thynketh the parliament shulde haue no power to make any lawe therin. Student. whan the churche had ordeyned, that the tithes of euery man shulde be payde to their owne churche / and the people receyued that lawe, and payde their tythes accordynge: than by that assent, the lawe was confirmed: And if the churche wolde not haue

made that lawe. I thynke the parlyment myght: for it was for the rest and quietnes of all the people, and that none myght have refused that lawe so made by parlyament; but to the lawe made by the church some did nat obey, but payed their tythes to other churches as they dyd before. And tho churches vnto this day have good right to those tithes, as portions belongyng to their churches / thoughe the grounde lye not within their parisshe: and so hath the king and the owners and possessours of suche waste grounde / that be out of al paryssshes at this day, good right to assigne the tithes therof, where they wyll. For as to those grounds they neuer receyued any lawe to the contrarye: and so I thinke it byndeth them nat in that behalfe. And no more shulde any newe lawe do, that were made by the churche of suche tithes, ne pulle the lybertie fro them, to assygne them where they wyll, without their assent. And where thou sayeste, that if the churche maye make a lawe of a thynge, that than the parlyament hath no power to make any lawe therin / I thynke that grounde holdeth nat. For if the churche wolde graunt a disme to be payed to the kyng, it were well graunted. But if they wolde nat / the parlyament may.

And

And in lyke wyse thoughe the churche hathe made a lawe / that curates shulde be resident upon their benefices: yet the parlyment hath also made a lawe / that they shall be so, and bothe lawes stande in good strength and effecte, as I suppose. And in lykewise it is of the statute of Vsurye, whiche was made in the .xx. yere of kynge Henry the. viij.

¶ The .viij. addicion concernynge the power of the parlyament / and the spirituakte.

DOctour. whether may the parlyament prohibite, that none ordinarie, ne none other, that hath power to visite, shall nat take any monye or pencion of the houses or places / that they visite at their Visitacion? Stud. I thynke the parlyament hath good power to do it. For þ money that they receive, thoughe it be gyue by occasiō of a spirituak thing, is temporall / & is vnder the power of the parlyament / as all temporall landes and goodes be. And if there be a ranse reasonable why they shulde make that prohibicion, than it bindeth as well in conscience as

yit hothe in the lawe / and an exampke is thereof by probate of testamentes. For though the probate be a thyng spirituall, yet the parlyament hath of late / as it myghte lawfully do, set a payne / that none shall pay for the probate above a certayne some lymitted by the statute. And also by the statute that is called in Latyn Statutum de Carliolo de asportatis religiosorũ, yit is enacted / that no house of religion of beyonde the see, shulde from thens forthe vnder colour of Visitation or other colour / sette any taklage or imposition vpon any house of religion / that is subiecte vnto yit in Englande : vpon the payne to forfayte all that yit hath vnder the kinges power. And the statute wyl further / that neuer the lesse the sayde abbottes and priours aliens shall nat ceasse of their Visitation within this realme / so that they beare no money nor goodes from the houses in Englande. And me thynketh / that lyke as the parliament had than power to prohibite, that the abbottes and priours alyens shulde nat vnder colour of Visitation or otherwyse set any taklage or imposition vpon any house of religion / subiecte to them in Englande / that the parliament may nowe as wel prohibite, that none vnder colour of Visitation, or

other

peruerſe/ſhal take of any houſe of religion
pretheuche, that they ſhall viſite/any ſomme
of money/or other thyng, what ſo euer it be.
For me thynketh, that the reaſon in the one
caſe and in the other is all one. Doctour.
It ſemeth naye. For at the makynge of that
ſtatute, the parliament entended principally
to prouide/that no goodes ſhulde be conueied
out of the realme by any religious perſo-
nes/whiche they dyd ſome tyme vnder co-
lour of viſitation: but in this caſe it needeth
nat to prouide any remedye in that behalfe/
as hit is euident of hit ſelfe. For there be
no goodes conueyed out of the realme by rea
ſon of ſuche viſitation. Student. Though
the principall intent of the ſayde parliament
was to prouide, that no goodes ſhulde be
conueyed out of the realme by religious per
ſones: yet as for a ſpeciall ſuertie, that hit
ſhulde be ſo, they thoughte hit neceſſarye to
prohibite/that the ſeed houſes of beyonde
the ſee, ſhulde nat by colour of theyr viſita-
tions in Englande do it. For they thoughte,
that that was a redy wey to bryngе the mo-
ney in to theyr handes, that they myght af-
ter carie hit with them in to theyr countrey:
And ſythe the parliament had than aurtori-
tie to prohibite, that the ſayde viſitors ſhulde

wel by colour of their visitations gather any
tallage or imposition setts upon them, that
they visited in Englande: why myght not
the parlyament nowe, lyke wyse prohibite,
that the visitors, at their visitations, shulde
gather no suche tallage or imposition, as
hath ben set in tyme paste upon suche houses
and churches as they do visite? for certayne
it is, that at the begynnynge of visitations
no such impositions ne pencions were paide:
but that they have ben brought up syth that
tyme, either at the motion of them that were
visited, to the intent that they myght thereby
have the more favour of their visitors, or
ells by power or compulsion of the visitors,
or for their singular lucre, or haply by both
weyes. But what weye so ever it beganne:
if it shulde hereafter come to the poynt, that
the visitors at their visitations, by reason of
the sayde impositions or pencions, shulde be
enclined to any singuler affection, and so to
forbeare the good reformations, that they
ought to loke to in the monasteries and chur-
ches, that they visite, whereby evyll doers
shulde take boldnes to continue in evyll: and
well doers be discouraged fro their vertuous
exercises in the service of god: I suppose we
see, that they that by good auctoritie and

with

with a charitable intent wolde take the sayd impositions and pensions fro the sayde Fryers, shuld deserue therby right great thanke and rewarde of god. But I truste there shalbe no suche cause to moue them so it.

And nowe I entende thus to make an ende of the auctorite of the parlyament for this tyme: and wyll aske of the but one litle question concernynge the matter that we treated of in the fyrst addition/ and so comprynte the to ouerlode. Doctour. what is that? Student. It is this: If a curate, sythe the statute of mortuaryes / thynkynge the sayde statute to be agaynste the libertie of the churche/ perswadeth his parysshens to be true, that al they that kepe the statute, stande in the censures of the churche, and therby he inducethe many of them / specially at the poynt of dethe, to recompense hym as more the as their mortuaries by estimation wolde haue amounted to: whether hath he good righte to that, that is gyuen vnder that maner. Doctour. If it be as thou sayest, that the statute standeth with conscience / thanne hath he no right therto in conscience. For he cometh to it by an vniuste meanes / and gyueth hym selfe for the hauynge of it/ vpon an vntruth: and so the gyuer is disceyued in

his

the gyfte, and therfore it standeth not in conscience, though hit stande in the lawe. And I suppose that though the curate saye as he thynketh therin, that yet is sufficeth not, but that he is bounde to restitution. For ignorance, as me thynketh, can not excuse the restitution, thoughe paraunture hit maye excuse hym, that hit shall not be in hym any deadly synne. Student. I thynke hit be as thou sayest, and as it is in this poynte, it is in diuers other articles vpon the saide iurisdictions, wherfore me thinketh, it wolde be moze playnely declared in many thynges, what belongeth to the one iurisdiction, & what to the other, than it is yet, as I haue sayd before, & that hath caused me to treate farther in this matter nowe at this tyme, than I thought to haue done. Doctour. I thynke hit be as thou sayest: but if I myghte be so bolde, I wolde desire to knowe thy mynde in one thynge and no moze, and that is this: of what effecte the statute is, that was made the .xv. yere of kyng Henry .vj. the fyrste chap. wherby hit is enacted, that ordinaries shall haue power by the kynges commission to enquere of the hospitals of his fondation, & of their gouernaunce, & to certifie the kyng in his Chauncerie therof. And of hospitals of others

fondac-

foundacion haue power to enquere / and to
correccion after the lawe of holy churche.
Student. At a leiser I wyll gladly here the
my mynde therin but for this tyme I praye
the holde me excused, for I wyll no more
speke of that matter as nowe. And thus god
of peace and loue be alway with vs. Amen.

FINIS.

¶ The table.

¶ What power the parlyament hath ouer
suche thinges, as be brought with deade bo-
dies to their burialles, and that be claymed
by some curates to perteine to their churche,
the firste addicion. fo. 2.

¶ Whether the parliament may enacte, that
no landes shall come hereafter in to mor-
mayne by licence nor without licence, the se-
conde addicion. fol. 4.

¶ Whether the parlyament may breake all
appropriacions / that be made against any
statute, or against the good ordre of the peo-
ple, the thirde addicion. fol. 7.

¶ That all sentuaries, and also who shall
haue his clergie be vnder the power of the
parlyament, to ordre as they shall thynke
conuenient, the. iiij. addicion. fol. 8.

¶ What

The table.

Whether the parliament may enact that no priest shall wear any cloth made out of the realme, and whether it may order the sleeues of chaplens fol. 11.

Whether the parliament may enact that no priest shall weare any cloth made out of the realme, and whether it may order the sleeues of chaplens fol. 11. Addition. fol. 12.

If there were a scisme in the papacy what the parliament ought do therin. fol. 13.

If there were a scisme in the papacy what the parliament ought do therin. fol. 13. Addition. fol. 14.

If it were enacted, that if any suit or plee were moued, that the fate should be taken vpon the kinges coate, and not in the spirituall court, whether the statute were good. fol. 15.

If it were enacted, that if any suit or plee were moued, that the fate should be taken vpon the kinges coate, and not in the spirituall court, whether the statute were good. fol. 15. Addition. fol. 19.

Whether the parliament may enact that no religious person vnder a certayne payne shall receyue into the house of their religion any children vnder a certayne age to be appointed by the parliament, the truthe doubted. fol. 19.

Whether the parliament may prohibite, that no ordinarie, vnder a certayne payne shall admytte none to the order of preesthode, except they be sufficientely lerned. fol.

pl. addicion. fol. xx.
¶ Who shall have the tuicion of the kynges grounides that be within no parysshe, & what power the parlyament hathe therin the pl. addicion. fol. xxv.
¶ What auctorite the parlyament hath concernyng vsurpacions. the pl. addicion. fol. xxv.

Thomas Berthelemi Iepins impressor excudebat. Anno domini M. D. xxxi. Cum priuilegio a rege indulto.

MVSEVM
BRITAN
NICVM